MT LEGISLATIVE HISTORY

Chapter 389 1985

Bill H 714 S _____ Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) _____ C

2/18 ✓C

2/20 ✓C

_____ C

Date Out Tabled ✓C

S. Committee on Judiciary

Hearing Date(s) _____ C

3/19 ✓C

_____ C

_____ C

3/23 ✓C

Did this bill originate in an interim committee? ___Yes ✗No

Committee _____ Report _____

HOUSE BILL NO. 714

INTRODUCED BY SPAETH, RAMIREZ

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

IN THE HOUSE

February 7, 1985	Introduced and referred to Committee on Judiciary.
February 25, 1985	On motion, taken from Committee on Judiciary and referred to second reading.
	Bill printed and placed on members' desks.
February 27, 1985	Second reading, do pass as amended.
	On motion, rules suspended and bill placed on third reading this day.
	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

March 5, 1985	Introduced and referred to Committee on Judiciary.
March 23, 1985	Committee recommend bill be concurred in. Report adopted.
March 27, 1985	Second reading, concurred in.
March 29, 1985	Third reading, concurred in. Ayes, 42; Noes, 7.
	Returned to House.

IN THE HOUSE

March 29, 1985 Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 714

INTRODUCED BY Smith Ramirez

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE DEFINITION OF "CLAIM" UNDER MONTANA'S TORT CLAIMS LAW; AMENDING SECTIONS 2-9-101 AND 2-9-107, MCA; PROVIDING RETROACTIVE APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-101, MCA, is amended to read:

"2-9-101. Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-107, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(6) "Property damage" means injury or destruction to

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tangible property, including loss of use thereof, caused by an occurrence for which the state may be held liable.

(7) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality thereof."

Section 2. Section 2-9-107, MCA, is amended to read:

"2-9-107. Limitation on governmental liability for damages in tort. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each ~~claimant~~ claim and $1 million for each occurrence.

(2) No insurer is liable for excess damages unless such insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived."

NEW SECTION. Section 3. Applicability. This act applies retroactively, within the meaning of 1-2-109, to all claims, lawsuits, and causes of action arising after July 1, 1977, which have not been reduced to final judgment.

NEW SECTION. Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Executive Session 12:15

Date 2/18/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

CONSIDERATION OF HOUSE BILL NO. 714: Rep. Gary Spaeth, House District #84 and co-sponsor of this bill, testified in support of H.B. 714. He informed the committee that this bill was introduced at the request of the Department of Administration. He said this bill deals with the question of sovereign immunity and the limits under state law as to the plaintiff and the defendant when the state is essentially the defendant. He said the main controversy of the bill is exhibited on page 3, lines 13 through 15. He said this bill returns the limitation on governmental liability for damages in tort to what he feels the legislature meant to pass in the original stage.

J. Michael Young, chief trial counsel for the Department of Administration, testified as a proponent to this bill. He said this bill is trying to close a potential loophole which was raised last session when the supreme court declared the existing limits of liability unconstitutional and a bill was brought in the last week of the session which quickly passed through both Houses to reinstate the limit of $300,000 per person, $1 million per occurrence. We have a number of cases that are starting to raise the issue that each person making a claim is a separate claimant entitled to the $300,000 per person.

Karl Englund, representing the Montana Trial Lawyers Association, testified as an opponent to H.B. 714. This issue says that if a person is injured irrespective of how many people he may be supporting or what the total amount of the damages are to all of his relatives, the claim is for only $300,000. There are no such limits applied in private litigation. Under this bill, they would apply in the litigation involving state and local entities. Mr. Englund stated that there may be a constitutional problem with this bill as it exists. The more you restrict the amounts of judgments against the State of Montana, the greater the class of people who may be harmed by this, the greater the opportunity that someone is going to bring a suit and potentially throw out the limits and therefore create the problem that was created at the end of the last legislature which would leave this thing wide open. The fact of the matter is that in some unusual and particularly grievous situation, there may be more than one family member to have more than a claim of $300,000 based upon the support and care that has been given to them by the injured person. This bill would cut those additional family members out of any potential judgments, and therefore the association thinks H.B. 714 is unwise.

There being no further proponents or opponents, Rep. Spaeth closed.

The floor was opened for a questioning period.

Rep. Keyser wanted to know, because the bill is retroactive, how many cases are we talking about that the Department of Administration has had before the courts from July 1, 1977 to present. Mr. Young responded by saying the reason that this goes back to 1977 is because that's when the first limitation of liability was enacted by the legislature, this was then declared unconstitutional in the Karla White case because of the economic, non-economic damage extension. He said that the department has had approximately 910 claims in this time period of which 150 are currently in court. Out of that 910, approximately 300 of those are still claims that could be filed in district court. We have roughly 500 accident incidents or potential claims every year. He further stated that this also covers local government.

There being no additional questions, hearing closed on H.B. 714.

CONSIDERATION OF HOUSE BILL NO. 700: Rep. John A. Mercer, House District #50, sponsor of H.B. 700, testified. He stated that H.B. 700 is a plea bargain bill. He informed the committee that there is nothing in the present code books dealing with plea bargains at all. Rep. Mercer referred to a supreme court case (State vs. Cavanaugh) in 1982 which established a rule of criminal procedure that section 1 of this bill is attempting to overturn. Rep. Mercer feels the bench should be independent and separate from a plea bargain. A plea bargain doesn't involve the judge -- it is an agreement between the prosecutor and the defense which in turn take their chances before the court.

Mike McGrath, Lewis and Clark County Attorney, stated that the mood of the county attorney's association is to support this bill. He pointed out that 96% of the cases filed are settled through the plea bargaining process. Because of the numerous criminal cases which are filed, plea bargaining is very necessary. Mr. McGrath did point out that he had a problem with the language on page 2, lines 17 and 18. He recommended that the sentence "A plea bargain agreement is not by itself good cause for a dismissal." be stricken from the bill.

Marc Racicot, representing the attorney general's office, testified as a proponent. He stated that the "Cavanaugh" case is not being uniformly applied.

Karl Englund, representing the Montana Trial Lawyer's Association, testified as an opponent and feels that we need to understand exactly what a plea bargain is. He pointed out why plea bargaining is so necessary. If we didn't have this

ACTION ON HOUSE BILL NO. 700: Rep. Hammond moved that H.B. 700 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Hammond further moved to amend on page 2, line 17 following "minutes." strike "A" through "dismissal." on line 18. The motion was seconded by Rep. O'Hara and carried unanimously.

Rep. Keyser moved that H.B. 700 DO PASS AS AMENDED. The motion was seconded by Rep. Hammond.

Rep. Addy feels this bill will present a constitutional problem. Rep. Mercer argued stating that the constitutional problem would be a due process question. He feels the bill eliminates the due process problem.

Rep. Krueger spoke in favor of the bill. He said it allows the court as an unbiased party to determine as he sees fit as to what type of sentencing a defendant should be given.

In response to a question asked by Rep. Addy, Rep. Krueger stated that he feels there will be no change in the number of people who plea. He doesn't see where it will change the plea bargaining system at all -- he feels it rather clarifies the process.

Rep. Mercer moved to amend on page 1, line 20 following "agreement" by inserting "is an agreement". Furthermore, on page 1, line 21, following "prosecutor" strike "is an agreement". The motion was seconded by Rep. Brown, and the motion carried unanimously.

Rep. Hammond moved that H.B. 700 DO PASS AS AMENDED. The motion was seconded by Rep. Keyser. The question was called, and the motion carried with Rep. Brown and Rapp-Svrcek dissenting.

ACTION ON HOUSE BILL NO. 714: Rep. O'Hara moved that H.B. 714 DO PASS. The motion was seconded by Rep. Keyser. At the request of Rep. Addy, action on H.B. 714 will be further delayed.

ACTION ON HOUSE BILL NO. 712: Rep. Grady moved that H.B. 712 DO PASS. The motion was seconded by Rep. Brown.

Rep. Addy moved to strike section 7 of the bill in its entirety. The motion was seconded by Rep. Brown. The question was called, and the motion to strike carried unanimously.

Rep. Addy further moved to amend on page 2, line 6 following "applied" by striking "or" through "later" on line 7. He

further discussed.

Rep. Krueger stated his objection to the do pass motion. He doesn't agree with the sponsor of the bill in that it will help marriages keep intact. He doesn't feel that people should be forced to remain married if they don't wish to. He also pointed out that in many cases, it can take up to six months or longer to settle the issues of property settlement, child custody and child support matters.

Rep. Krueger made a substitute motion that HB 760 DO NOT PASS. The motion was seconded by Rep. Brown and further discussed.

Rep. Mercer spoke against the substitute motion by saying that if people are allowed to get a divorce before any of the other issues are resolved, a tremendous driving force will be taken away to get these other issues resolved.

The question was called on the DO NOT PASS motion, and it carried 9-6. (See roll call vote)

ACTION ON HOUSE BILL NO. 779: Rep. O'Hara moved that HB 779 DO PASS. The motion was seconded by Rep. Brown.

Rep. O'Hara further moved to amend HB 779 on page 2, lines 6 and 7 to strike subsection (3) in its entirety. Furthermore, the amendment would include striking the "." on line 5 following "contraband" and inserting "; and". The motion was seconded by Rep. Gould and discussed.

Rep. Hannah spoke against the motion to amend and said that we need to be prepared in the areas dealing with gambling.

The question was called on the motion to amend, and it failed on a voice vote.

Rep. O'Hara moved that HB 779 DO PASS. The motion was seconded by Rep. Gould and carried with Reps. Brown, Rapp-Svrcek and Montayne dissenting.

ACTION ON HOUSE BILL NO. 714: Rep. Brown moved that HB 714 DO PASS. The motion was seconded by Rep. O'Hara.

Rep. Krueger stated that this bill limits the claims of the state up to $300,000 no matter how many claimants are involved. He said that this bill allows the state to be protected only to the extent of $300,000. He feels this is a gross inequity in relation to society in general. It is also limiting claims in relation to severe cases. He feels that this bill is going clearly beyond the grounds of any other civil action in the court system. We are attempting to protect the government based on circumstances

unknown.

Therefore, Rep. Krueger made a substitute motion for a DO NOT PASS. The motion was seconded by Rep. Brown and the committee further discussed the intent of HB 714.

Rep. Addy said that this bill places a cap on damages awarded. He feels it would punish mostly the innocent victims who are hurt the most. Rep. Addy said the effect of this bill is to bring the $1 million cap down in a situation where one person has been killed to $300,000. In a situation where two people have been killed, it has been lowered to $600,000. The bill is changing the $1 million per occurrence. The only time there is a $1 million cap in an accident is when four or more people are killed. We are saying here that if the state runs over a person, a person better not be hurt too badly because he is going to be on his own.

Rep. O'Hara wanted to know if a person who was hurt in an accident caused by the state can come back and file a lawsuit against the person who caused the accident. Rep. Addy said that as long as it wasn't gross negligence or willful or wrongful conduct, the governmental employee was acting in the scope of his duties and wouldn't be held personally liable.

Following further discussion, Rep. Addy moved that HB 714 BE TABLED. The motion was seconded by Rep. Keyser and the motion carried with Reps. Eudaily and O'Hara dissenting.

CONSIDERATION OF HOUSE BILL NO. 767: Hearing commenced on HB 767. Rep. Steve Waldron, District #58 and sponsor of the bill, offered testimony in support of it. He said this bill is a housekeeping bill that clears up a little problem with the court system in Montana in that the funding for the court system is split. It is split between the state and local governments. Rep. Waldron stated that he has always been in favor of trying to put the district courts under the authority of the supreme court and to have the funding run through the state. House Bill No. 767 would freeze county mill levies for district courts at 1984 levels and ship the money to the state to offset court costs statewide. The bill would further allow a $10 increase in motor vehicle registration fees to help the state meet its obligation to pay for district court costs. The district courts enforce state law. He feels quite a burden has been placed on counties by requiring them to fund a state job. There is absolutely no fiscal control over district courts when that responsibility is placed on counties.

Greg Jackson, representing the Urban Coalition which represents Montana's larger cities and counties in the state, stated that full funding of district court costs and admin-

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION - 7:30 p.m. Date 2/20/85

NAME	PRESENT	ABSENT	EXCUSE
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)	✓		
Kelly Addy	✓		
Toni Bergene			✓
John Cobb	✓		
Paula Darko			✓
Ralph Eudaily	✓		
Budd Gould			✓
Edward Grady			✓
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles			✓
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek	✓		

Senator Shaw asked if the committee were to take the House amendments off, would they kill the bill. Representative Spaeth replied he was not sure. He moved the House reconsider this bill on second reading to come up with the amendments presently before the Senate committee.

CLOSING STATEMENT: Representative Spaeth supported the amendment. He commented he would prefer the bill in its original state, but this is the best we can do and it does address a very serious problem.

Hearing on HB 426 was closed.

CONSIDERATION OF HB 714: Representative Gary Spaeth, sponsor of HB 714, testified this bill is a response to the Karla White case. As a result of legislation you passed, page 3 says $300,000 for each claimant and $1 million for each occurrence. Each claimant has been changed to each claim. If there were one injury, it would be $300,000; if two injuries, $600,000. That was the thinking at that time. Through creative thinking by members of the bar, that one injury was expanded to other people in the family who are affected, so they are trying to double and treble that so we eliminate the $300,000 cap and the only cap we have is $1 million. Is the $300,000 or $1 million a reasonable cap? Those caps affect local governments, school districts, etc. We don't know what those impacts will be, but we should take a look at it and study it. Before we change those caps, we have to tighten those caps up.

PROPONENTS: Mike Young, Administrator for the Department of Administration, testified they defend all of the claims against the state of Montana for bodily injury. They are trying to plug a loophole in this cap. They believe that has been the legislature's intent. This issue has been raised in about six district court cases. No judge has ruled on it either at the district court level or at the supreme court level. The case of Dawson v. Hill and Hill Trucking created another right--If a member of the immediate family witnesses another family member's being killed, they now have a right to a claim. If we are going to have these caps, let's have meaningful claims; and if not, let's get rid of them. Chip Erdmann, representing the Montana School Board Association, felt this bill clarified what the original intent of the law is and clarified what the exposure was for the insurance rates.

OPPONENTS: Karl Englund, representing the Montana Trial Lawyers Association, stated he does not know the intent of the legislature last session, so he cannot speak to the issue of this bill's doing what the legislature thought last time, but he can speak to the issue of one limit for one injury when you can have multiple parties that are affected by that injury. The $300,000 limit could potentially just pay for the hospitalization and not compensate for loss of earnings. We are not saying you left a little loophole and we want to drive a Mack truck

through it. However, this law greatly affects the bread winner of a family. They feel the statute is fine the way it is.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Spaeth stated it was the intent of the legislature to have $300,000 per claim, not per claimant. He questioned some of our whole realm of sovereign immunity, but we should not overturn it without knowing some of its ramifications.

Hearing on HB 714 was closed.

ACTION ON HB 426: Senator Blaylock moved HB 426 be amended as follows:

Page 3, line 8.
Following: "27-19-316"
Strike: "(4)"

The motion carried unanimously. Senator Blaylock moved HB 426 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 200: Proposed amendments were distributed to the committee (Exhibit 4). Mr. Petesch explained what these amendments do is repeal the termination date which is section 1 in the bill and then the other changes are you go to the effective date section and say section 2 (the repealer) would be effective on passage and approval, and section 1 (the new number for overcrowding) would then be effective 30 days after the occupancy. Senator Towe commented that is a cleaner way of doing it. Senator Mazurek stated we are saying what the bill currently says in a cleaner way. Senator Towe explained we were amending a section and then repealing it. He approved. Senator Towe moved the amendments be adopted. The motion carried unanimously. Senator Blaylock moved HB 200 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 44: Senator Towe moved HB 44 be amended (as indicated by the standing committee report). The motion carried unanimously. Senator Blaylock moved HB 44 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senator Daniels voting in opposition.

FURTHER CONSIDERATION OF HB 310: Senator Crippen presented proposed amendments to the committee (Exhibit 5) and moved their adoption. This just provides another forum so the person involved can show he cannot pay the costs. It would not do any good to allow any relief if he cannot pay the costs. Mr. Petesch pointed out you need to make some amendments to page 7, lines 6-8, because there is still reference to justice and municipal courts. The motion to amend carried unanimously. Senator Shaw moved allowing the justice of the peace to file a restraining

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 03/19/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

The motion carried unanimously. Senator Towe moved HB 517 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 613: Mr. Petesch stated he looked into separation of powers in this bill. The legislature is on safe grounds in providing what grounds are at issue. The court doesn't tell the Secretary of State to change the ballot. It enjoins it and then the Secretary of State decides what to do. Senator Pinsoneault moved HB 613 be recommended BE NOT CONCURRED IN. Senator Crippen stated he realizes we are 90-day wonders while we are here. Even though we figure the court may not go along with what we do, we should not walk away from a bill because of that argument. If we feel it is a good bill, we should go on record and say so; if no, kill it. Senator Towe agreed. He stated he thinks there is a problem that the Secretary of State and the clerks of court have. This may add enough strength to the problem that the courts will leave their hands off. Senator Brown stated it might just hurt one little bit. Maybe it's in the public's interest to find one of these things shouldn't go on the ballot. What purpose is served by putting a statute on the books they can get around? Senator Towe responded the courts are reluctant to interfere. A statute may firm that up. He thinks it is wise we express our opinion on the matter. Senator Daniels stated he thinks it has some political ramifications. He thinks the court will do effectively the same thing it did regardless of this. We shouldn't enact a law that says "no court shall order a change." That is beyond our discretion. Senator Towe commented they do that in injunctions. The motion carried with Senators Crippen, Galt, Shaw, and Towe voting in opposition.

ACTION ON HB 714: Mr. Petesch stated what the testimony presented is an attempt to clarify that you are referring to each claim and not each claimant. Senator Towe moved HB 714 be recommended BE CONCURRED IN. Senator Daniels stated he thinks again we have set the limit on how much you can sue the state of Montana for. You are just limiting them more than you intend to limit. Senator Towe commented on that situation, this is injury or death to a single person. If you have injury to both the husband and wife, you have it doubled anyway. Senator Daniels responded he did not read it as the single person being the unmarried person. Mr. Petesch pointed out there is the qualifier on the end of that release of the number of persons or entities claiming damages thereby are considered one claim. Karl Englund, of the Montana Trial Lawyers Association, stated he understands the idea was that an injury to one person the $300,000 limit applied irrespective of how many people may have injuries as a result of the injury to that one person. The limit applies to the hospitalization, wrongful death, and survivorship action. The way the statute reads now is each person who could have injuries as a result of the injury to that single person could have

damages up to $300,000. Senator Towe stated this is to say the $300,000 applies to each injury, not to each person who might claim from that injury. Mr. Petesch stated the problem is occurrence is never defined anywhere. The occurrence he is assuming would be the wreck. Maybe the bill would be clearer if it said each individual hurt in the wreck can claim it. Senator Towe stated he thinks it is taking it too far to say an individual gets $300,000 and his heirs also get $300,000 because that same person was injured. Mr. Petesch pointed a resolution was being introduced to conduct a study on this issue. Senator Daniels did not think it was fair. Senator Yellowtail asked about the interim study proposal. Mr. Petesch explained it would be a study of the matter of governmental immunity and the caps involved. Senator Blaylock commented he hoped they didn't take the caps out entirely. The motion carried with Senators Daniels and Yellowtail voting in opposition.

ACTION ON HB 585: A proposed amendment was distributed to the committee (Exhibit 2). Mr. Petesch explained this was requested by Senator Mazurek and conforms the title of the bill to the bill as amended. Senator Towe moved HB 585 be recommended BE NOT CONCURRED IN. Mr. Petesch stated the rules of the Sentence Review Division require the judge and the prosecution get notice anyway, along with any other person who requests notice. Subject to the rules of the prison on attendance, they can participate. Senator Pinsoneault stated he supported the Sentence Review Board, but thinks this allows expanded participation. Senator Towe pointed out the rules already do that. Senator Pinsoneault did not think that was enough. Mr. Petesch stated currently when the judge gets notice, he is entitled to file anything he wants. It doesn't address participation in the review proceedings by anyone other than the county attorney and the attorney there. The effect of this bill is to say the sentencing judge or any of the interested parties can participate in the actual proceeding. Senator Towe stated any other interested persons includes a sentencing judge. Senator Blaylock stated on all of these bills like this, no other judges came and testified. He didn't see this as a problem in the state of Montana. Chairman Mazurek stated he had talked with Judge Keedy after the committee killed SB 481. Judge Keedy feels the committee reacts to him hostilely. He feels badly about that. He recalls as a legislator judges never came to testify. What he is doing is responding to requests from legislators. We feel he is still trying to legislate. That isn't what he perceives himself as doing. Senator Daniels stated he did not have that feeling toward Judge Keedy. Senator Pinsoneault commented the fact the judge isn't here does not depict a lack of interest. They just can't work it into their schedules. It probably makes attorneys upset if they do. Senator Towe questioned whether the committee wanted to put in the bill that they have the authority to appear and testify because there may be some question at this time. Senator Pinsoneault replied yes. Mr. Petesch

STANDING COMMITTEE REPORT

March 23 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 714

third reading copy (blue color)

(Senator Towe)

CLARIFY DEFINITION OF "CLAIM" UNDER MONTANA'S TORT CLAIMS LAW

Respectfully report as follows: That HOUSE BILL No. 714

BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Senator Joe Mazurek Chairman.